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By Email & Overnight Delivery

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Re: Diamond Alkali, Lower Passaic River Study Area River Mile 10.9
Unilateral Administrative Order for Removal Response Activities
US EPA Region 2 CERCLA Docket No. 02-2012-2020 (the Order).

Dear Ms. Flanagan and Ms. Vaughn:

Thank you again for the opportunity to meet on November 19, 2013, and for the requested follow-up information you provided. Our clients, Occidental Chemical Corporation (Occidental), Maxus Energy Corporation (Maxus) and Tierra Solutions, Inc. (Tierra)[1] have considered the matters we discussed in that meeting and have reflected further on your letter of October 22, 2013, that describes two tasks.

By this letter, we wish to set forth the history of our dealings regarding the above-referenced Order, our view of Occidental's circumstances, and a request as to schedule. We believe that Occidental has complied at all times with the Unilateral Administrative Order. Although our clients are willing and available to continue to seek ways for Occidental to participate and cooperate in the RM 10.9 Time Critical Removal Action (TCRA), we believe the tasks EPA suggested are not suitable for Occidental, Maxus or Tierra to implement primarily for the reasons set forth below. As an alternative means of participation—in addition to the actions Maxus or Tierra have taken on Occidental's behalf to comply with the

[1] Reference to Tierra also refers to its corporate affiliate, Maxus Energy Corporation, each of which acts on behalf of Occidental Chemical Corporation, pursuant to contractual arrangement.

Order—you may recall that Tierra previously suggested it might reimburse EPA's oversight costs up to some agreed-upon amount. Perhaps we could revisit that suggestion.

Before proceeding to the matter of the Order, Tierra would like to emphasize its long and consistent history, dating back to 1984, of compliance with all settlement agreements and administrative orders related to the Diamond Alkali Superfund Site on behalf of Occidental. These include two state Administrative Consent Orders and the federal judicial consent decree requiring performance of remedial actions on the former Diamond Alkali plant site; the 1994 Administrative Order on Consent ("AOC") requiring performance of a Remedial Investigation/Feasibility Study for a portion of the Lower Passaic River; the 2004 AOC requiring performance of a Remedial Investigation/Feasibility Study for Newark Bay; the 2004 and 2007 AOCs for an expanded Lower Passaic River RI/FS: the 2008 AOC requiring a sediment removal action in areas proximate to the former Diamond Alkali plant site; and the 2011 AOC requiring performance of a CSO/SSO Study to assess ongoing inputs of hazardous substances to the Lower Passaic River. Tierra, on behalf of Occidental, has incurred over $282 million in costs performing the obligations set forth in these documents. Much of this work has involved areas, such as Newark Bay, where there are unquestionably many significant contributors to the presence of hazardous substances who have refused to participate in providing meaningful financial or material assistance to Tierra's efforts; even so, Tierra has not sought to evade these obligations or induce EPA to impose them on other parties. Further, Tierra's work under the 2008 removal action AOC represented a significant voluntary commitment to perform sediment cleanup at a time when no other parties were willing to perform such work. During this nearly 30-year period, Tierra and its predecessors have fully complied with all of the obligations imposed under these agreements and have performed all required tasks to the satisfaction of EPA.

In keeping with this history, since its issuance, Occidental has complied at all times with the Unilateral Administrative Order. In Section VIII, Participation and Cooperation, paragraph 12 provides that Occidental must make best efforts to coordinate with the Settling Parties the same response action as those parties agreed to implement, and paragraph 13 requires that Occidental make best efforts to participate in the performance of the SOW with the Settling Parties. Occidental, through its good faith offer, met the Order's deadlines in making best efforts to coordinate and participate, and we kept EPA apprised of those efforts.

When we met with EPA on June 26, 2012, EPA advised us of its views as to how Occidental might comply with the Order, explaining that it normally would not have issued a

unilateral order so quickly after execution of a settlement agreement with other parties, but that it had perceived there to be infrastructure opportunities that would not be available within another month or two. EPA noted that the RM 10.9 Settling Parties would have sediment decontamination vendors conduct bench-scale tests on RM 10.9 sediments, following which the Settling Parties were to decide whether to conduct pilot-scale treatment of approximately 5,000 – 8,000 cubic yards of sediments.

EPA shared with us that, if laboratory testing of the decontamination technologies were unsuccessful, the Settling Parties would need to dispose of approximately 16,000 cubic yards of contaminated sediments. Recognizing that the Tierra ground lease for the Upland Processing Facility (UPF) would soon expire, EPA advised us that the UPF could be useful as an alternative for implementing the TCRA if the decontamination technologies were not successful.[2] EPA explained that it was willing to accept a degree of uncertainty as to Occidental's financial commitment for RM 10.9 because of the importance to EPA of the UPF remaining available as a treatment facility to manage 16,000 cubic yards of material, if needed, to minimize potential delay in implementation of the TCRA.

We discussed the challenges attendant upon the UPF remaining in place, given that Tierra had to deal with third parties to whom commercial opportunities were available for the land and the equipment. We also discussed the significant costs attendant upon the UPF remaining available while the Settling Parties completed their removal action design process. EPA confirmed that it expected the Settling Parties, not Occidental, to pay for the actual use of the UPF to treat sediment during implementation of the removal action. EPA characterized this course of action as one of value to EPA in that the UPF availability could avoid delay, and concomitantly, EPA considered the value to the Settling Parties as being the opportunity to save the cost of planning, siting and constructing a dewatering facility. EPA anticipated that the cost for Occidental would be in the range of $1-2 million. As described below, Tierra, on Occidental's behalf, immediately took active steps and began to incur costs to maintain the availability of the UPF, as desired by EPA.

On July 12, 2012, Tierra advised EPA that it had committed funds to maintain the status quo for the UPF to be available for Settling Parties' use to dewater and handle for

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[2] EPA's presentation at the September 18, 2012 Community Action Group meeting advised the community that the technologies were not successful in bench-scale testing.

disposal any RM 10.9 sediments in excess of what might be addressed by alternative treatment technologies. By then Tierra had already incurred costs of $150,000 to maintain the availability of the UPF, and Tierra had already commenced negotiations to extend the ground lease another year and to have the dewatering equipment remain onsite.

By letter of July 27, 2012, we transmitted to the Settling Parties Occidental's good faith offer. As is explained therein, the extension of the ground lease and the maintenance of the dewatering equipment were expected to cause Tierra to incur over $2 million in expenditures, more than $250,000 of which had already been committed by that date. We offered to convene a meeting with the Settling Parties to answer questions and advised them that time was of the essence.

Thereafter, on August 6, 2012, we provided the Settling Parties a proposed agreement to memorialize the actions set forth in Occidental's good faith offer, and we again stressed the need for prompt consideration in that time was of the essence. We had intended the proposed agreement to be the starting point for discussions with the Settling Parties; we did not characterize it as a take-it-or-leave-it document, but the Settling Parties never afforded us any opportunity to explain our vision of how the arrangement would work or to answer questions and accommodate any concerns.

On August 10, 2012, the Settling Parties rejected Occidental's good faith offer, which they improperly and incorrectly maligned as an attempt to shift Tierra's obligation to restore the UPF. (The Settling Parties' letter inexplicably refers to the proposed agreement as the good faith offer, rather than recognizing the good faith offer as having been conveyed in our July 23, 2012 letter.) Because the Settling Parties were never willing to meet with us, we were unable to engage in negotiations as envisioned in the Order.

Approximately two weeks later, by letter of August 23, 2012, EPA invited representatives of the Settling Parties and Occidental to meet with EPA to discuss how the UPF might be incorporated into the TCRA. Recognizing that Occidental would incur, as it already had incurred, costs to maintain the availability of the UPF, EPA accepted Occidental's actions and expenditures in doing so "as part of its compliance with" the above-referenced Order.

The next day we wrote EPA to request that it convene such a meeting as it proposed the following week and we advised EPA that Tierra, on behalf of Occidental, by that time had already spent, or had committed to spend, more than $550,000, and that keeping the UPF

option available until September 27, 2012, would cost an additional $250,000, after which the costs would escalate substantially, well beyond what could be reasonably borne in the face of the significant uncertainty attendant upon dealing with the Settling Parties.

On Friday, September 7, 2012, the Settling Parties submitted their response to questions EPA had posed in its August 23, 2012 letter. The Settling Parties advised EPA that they had alternative plans for handling materials to be excavated at RM 10.9, again rejecting Occidental's good faith offer.

We appreciate EPA's having convened the September 13, 2012 meeting with the Settling Parties, during which Tierra advised that it had spent more than $830,000 to implement Occidental's good faith offer and that it would very shortly have to commit to substantial additional expenditures to maintain the availability of the UPF. We also appreciated EPA's telephonic notification on September 21, 2012, that Tierra could dismantle the equipment and withdraw from the UPF site, which it then proceeded to do.

As was apparent in the September 13, 2012 meeting, the Settling Parties have no interest in cooperating with Occidental on the TCRA in a manner as envisioned by EPA. After the Settling Parties had departed that meeting, EPA asked Tierra if it had other ideas for Occidental's participation and cooperation, in response to which we suggested that Tierra, on behalf of Occidental, might reimburse EPA's oversight costs up to an agreed-upon amount. Although EPA committed to think about our suggestion, we have not mutually revisited this idea.

As this recapitulation demonstrates, Tierra promptly and fully undertook to provide what EPA sought, and Tierra did so at substantial cost and effort. In the actions described above, Tierra has spent more than $830,000 in responding to the Order and now finds itself in an unresolved, costly and time-consuming dispute with the owner /lessor of the land on which the UPF was located. Tierra continues to incur significant transaction costs to defend itself, in large part resulting from Tierra's having met EPA's stated expectations for compliance with the UAO.

As to other requirements of the Order, by letter of July 30, 2012, Occidental designated Paul Bluestein as the Project Coordinator. EPA by letter of June 3, 2013, suspended the requirement for Occidental to submit monthly reports, and EPA has periodically extended the time for demonstration of financial assurance, which is appreciated.

Occidental acknowledges that EPA expects some further participation in the TCRA, but the two tasks -- one concerning the completion of the removal action in the vicinity of two 72" water mains and the other an engineering analysis of the eleven moveable bridges used in the removal action on the Passaic and Hackensack Rivers -- identified in EPA's October 22, 2013 letter are properly the responsibility of the CPG, not Occidental.

The RM 10.9 Settlement Agreement requires that the Settling Parties remove the sediment designated at RM 10.9, and the Settling Parties are bound by that agreement to do so. The Statement of Work requires removal with no exception made for the presence of water mains, and it requires that the Settling Parties transport that sediment to a processing facility. The Settling Parties should complete this Work. For Occidental instead to attempt to do so at this stage will necessarily involve much duplication and wasted effort. The Settling Parties have procedures, engineering consultants, vendors, equipment and contractual arrangements in place; they are familiar with the area and are best suited to complete what they started. Perhaps more importantly, given the lack of cooperation from the Settling Parties, none of the experience they have developed would be available for Occidental to utilize.

Similarly, the Settling Parties have dealt with the owners and/or operators of the bridges on the Passaic and Hackensack Rivers. They know the problems and requisite logistics and they are best suited to address them promptly and efficiently. For Occidental to interject itself into this situation at this late stage is impractical and will delay completion of the Time Critical Removal Action.

Beyond these concerns, Occidental also has other significant concerns about conducting the bridge study, as envisioned by EPA. Such a study will reach conclusions and make recommendations on infrastructure used by the public and owned and/or operated by governmental entities. We fear that this could lead to unintended and unquantifiable costs and litigation, all of which are unreasonable to expect of Occidental. Claims against the owners of these bridges are subject to governmental immunity; Occidental enjoys no such immunity.

Our clients welcome EPA's plan to conduct additional sampling at RM 10.9 and to further evaluate Givaudan Fragrance Corporation's contribution of dioxin in the vicinity of RM 10.9. Given that EPA expects to have results of that evaluation in the coming Spring or Summer, and given the effort and funds that Tierra, on behalf of Occidental, has expended or will spend, we respectfully request that EPA await requiring further Occidental response

under the Order until EPA has the results of that evaluation. EPA's sampling may show an ongoing source of dioxin that should be addressed before further removal is undertaken. It also may demonstrate the source of the contaminant at RM 10.9. In any event, given the onset of winter, further removal cannot reasonably occur until next summer.

Finally, we note that Guillermo Jalfin, the Chief Executive Officer of Maxus, will be meeting with the Regional Administrator on January 14, 2013, and that this will provide a near-term opportunity for additional discussion of EPA's concerns and intentions for the Lower Passaic River.

We appreciate your continuing courtesies in working to achieve a means for participation and cooperation in the TCRA at RM 10.9. Please do not hesitate to let me know if you have any questions.

Very truly yours,

Carol Dinkins

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